

REMARKS

Claims 1 and 49-72 are pending in this application. Applicants respectfully request reconsideration and withdrawal of the rejections in view of the arguments set forth below.

Rejection of Claims 1, 49, 54-66, 70, and 71 Under 35 USC § 102(b) in view of Eicher et al. (PCT publication WO 97/03718)

Claims 1, 49, 54-66, 70 and 71 are rejected under 35 USC § 102(b) as allegedly anticipated by Eicher *et al.* The Office Action cites Eicher and largely reiterates the amended claim 1 in rejecting these claims. The Office Action alleges that col. 4, lines 12-30 of Eicher disclose that the substrate and/or microneedles are formed from flexible materials.

The referred-to section of Eicher reads:

Materials which may be used to produce the container and the micro-pins include primarily thermoplastic materials which may be sintered in a mould starting from fine granules. By a suitable choice of the parameters of pressure, temperature (typically and below the melting temperature of the material) and time, a reproducible porosity (typically 50%) is achieved. By subsequently melting the surface of the component in a controlled manner it is sealed so as to produce a porous container with a leak tight outer wall. Areas of the wall which should be kept permeable, such as the ventilation devices and the tips of the pins, are kept below the melting temperature by cooling. In order to seal off the porous wall, it is also possible to use coatings and sealants, but these are technically more complex. The degree of porosity and the cross-sections of release at the tips of the pins are variable within wide limits and thus constitute parameters for adjusting the metering rate. Examples of other suitable materials include polyethylenes, polypropylenes or polysulphones.

The Office Action does not point out, and Applicants fail to identify, which part of this quoted section allegedly discloses the claimed subject matter. However, for the sake of expedited prosecution, Applicants assume that the Office Action means that certain mentioned materials (such as “thermoplastic materials,” or “polyethylenes, polypropylenes or polysulphones”) may be “flexible” and will allow the device to “fit the contour of the biological barrier.” If this is what the Office Action means, Applicants respectfully disagree, since materials commonly referred-to as “plastic” may range from being extremely pliable

(such as plastic wrapper for food) to indestructable (and certainly inflexible) hard plastic. For example, polyethylene can be used to make school desktop. Low density polypropylene can be flexible, while high density polypropylene can be either flexible or rigid. Thus, without explicitly reciting that these materials are flexible when used in the claimed device, Eicher at best discloses a genus of materials, which does not anticipate un-named species.

Therefore, reconsideration and withdrawal of the rejection under 35 USC § 102(b) are respectfully requested.

Claim Rejections under 35 USC § 103(a)

Claims 50-53 stand rejected under 35 U.S.C. § 103(a) as being obvious over Eicher *et al.*

Claims 67 and 68 stand rejected under 35 U.S.C. § 103(a) as being obvious over Eicher *et al.* in view of Gerstel *et al.* (US 3,964,482).

Claims 69 and 72 stand rejected under 35 U.S.C. §103(a) as being obvious over Eicher *et al.* in view of Godshall *et al.* (US 5,879,326).

As argued above, Applicants reiterate that the amended invention recites features neither disclosed nor suggested by Eicher. Neither Gerstel nor Godshall teach or suggest the subject matter recited in the amended independent claims 1 and 70 from which claims 67-69 and 72 depend. Claims 67-69 and 72 are therefore patentable for the same reasons that claims 1 and 70 are patentable. Thus Applicants respectfully request reconsideration and withdrawal of rejections on grounds of 35 U.S.C. § 103(a).

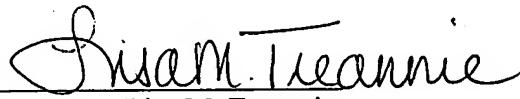
CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

We believe that we have appropriately provided for fees due in connection with this submission. However, if there are any other fees due in connection with the filing of this Response, please charge the fees to our Deposit Account No. 18-1945, referencing the attorney docket number listed above.

Dated: February 15, 2005

Respectfully submitted,

By 
Lisa M. Treannie
Registration No.: 41,368
ROPES & GRAY LLP
One International Place
Boston, Massachusetts 02110-2624
(617) 951-7000
(617) 951-7050 (Fax)
Attorney For Applicants